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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,362	07/11/2001	Felix Achille	44452A	9554
109	7590	11/17/2004		
THE DOW CHEMICAL COMPANY INTELLECTUAL PROPERTY SECTION P. O. BOX 1967 MIDLAND, MI 48641-1967			EXAMINER TRAN, THAO T	
			ART UNIT 1711	PAPER NUMBER

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,362

Applicant(s)

ACHILLE, FELIX

Examiner

Thao T. Tran

Art Unit

1711

7A

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 12-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/05/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 25, 2004 has been entered.
2. Claims 1-33 are currently pending in this application.
3. Claims 12-16 and 18-31 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 16, 2003.
4. Claim 17 has been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim, as indicated in the Office action of March 4, 2004.
5. In view of the prior Office action of August 11, 2004, the rejection of claims 1-11 and 32, under 35 U.S.C. 102(b) as being anticipated by Nagata et al. (US Pat. 5,567,744), has been withdrawn due to the Amendments made thereto.
6. In view of the prior Office action of August 11, 2004, the rejection of claim 33, under 35 U.S.C. 103(a) as being unpatentable over Nagata, has been withdrawn due to the Amendments made thereto.
7. Upon further consideration a new rejection is issued as follows.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-12 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Korpman (US Pat. 4,318,408).

Korpman teaches an extruded thermoplastic superabsorbent polymer composition and a method of making, the composition comprising a water-swelling organic polymer imbedded in a water-insoluble non-swelling matrix of an elastomeric polymer (see abstract).

Korpman teaches that the absorbent polymers (superabsorbent) include acrylate polymer, acrylate modified polysaccharides, and crosslinked carboxymethyl cellulose (see col. 4, ln. 7-43). The elastomeric polymers include block copolymers of styrene, butadiene, ethylene, butylenes, propylene (see col. 8, ln. 45-59, col. 9, ln. 29-39). Korpman teaches the blend further comprising an emulsifier (surfactant) (see col. 7, ln. 30). The blend can be extruded (see col. 10, ln. 10-12).

Although Korpman does not specifically teach how the elastomeric polymers interact with the absorbent polymers, or the melt draw down rate of the polymer blend, since Korpman teaches the same chemical constituents of the blend, these properties would inherently be the same as presently claimed.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Korpman as applied to claim 32 above.

Korpman is as set forth in claim 32 above and incorporated herein.

Korpman further teaches the absorbent polymer is about 5-200 parts for every 100 parts by weight of the matrix polymers, which would translate into about 5-67% weight in the blend, overlapping the instantly claimed range. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have selected the overlapping portion as taught by Korpman, because by teaching the overlapping portion Korpman directly teaches the use of a concentration within the instantly claimed range. See MPEP 2144.05, subsection I.

Response to Arguments

12. Applicant's arguments with respect to claims 1-11 and 32-33 have been considered but are moot in view of the new ground(s) of rejection.

Contact Information

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tt
November 15, 2004

Thao Tran
THAO T. TRAN
PATENT EXAMINER